

**HOUSE RESOLUTION NO. 36**

(By Delegates Sigler, Andes, Border, Ellington, Ferns,  
Gearheart, Hamilton, Householder, Howell, Jones,  
Kominar, Kump, Nelson, O'Neal, Perry, R. Phillips,  
Pino, Rowan, Shaver, Snuffer, Talbott and Walker)

Urging the Mine Safety and Health Administration of the United States Department of Labor to implement comprehensive drug free workplace regulations that include drug and alcohol testing.

WHEREAS, The coal mining industry is a critically important component of the economy of West Virginia; and

WHEREAS, Coal mining, by its intrinsic hazards to miner health and safety, does not provide "second chances" for "mistakes" caused by a miner altered or impaired by drug and/or alcohol abuse; and

WHEREAS, Substance abuse in mines is one of the most pressing issues facing the coal industry; in fact, anecdotal and toxicological evidence from recent coal mining fatalities and accidents suggest a very serious problem of drug and alcohol abuse which places everyone working in the mine at risk; and

WHEREAS, Among the problems encountered by the operators of coal mines include the proliferation of prescription pain medication, the availability of illegal substances, use of prescription drugs on the job causing impairment or altered behavior and the availability of "cleansing" agents via the internet or local vendors supplying masking agents to alter

1 samples; and

2       WHEREAS, Individual mines that have implemented voluntary drug  
3 free workplace programs that include drug and alcohol testing have  
4 not only experienced improvements in workplace safety but have also  
5 benefitted by the resulting reduced workers' compensation costs;  
6 and

7       WHEREAS, The mining industry has not uniformly adopted the use  
8 of drug and alcohol testing and, while some individual mines have  
9 had some success in adopting their own drug and alcohol testing  
10 policies, there is no consistency in the testing methods employed  
11 by those mines; and

12       WHEREAS, The lack of a requirement for standardized drug and  
13 alcohol testing throughout the coal mining industry has permitted  
14 persons who abuse drugs or alcohol to selectively apply for  
15 employment in mine operations which either do not require drug and  
16 alcohol testing, or which employ less stringent testing methods and  
17 thereby increase the possibility of avoiding detection of the  
18 abuse; and

19       WHEREAS, Such selective application actions occur not only at  
20 coal mines in West Virginia, but also at nearby mines in adjoining  
21 states, thereby jeopardizing the safety of the coal miners in those  
22 mines; and

23       WHEREAS, West Virginia's coal mining industry is subject to the  
24 Federal Mine Safety and Health Act of 1911 in which Congress

1 declared that "the first priority and concern of all in the coal or  
2 other mining industry must be the health and safety of its most  
3 precious resource the miner"; and

4       WHEREAS, The act directed the Secretary of the Department of  
5 Labor to develop, promulgate, and revise as may be appropriate, a  
6 set of mandatory health or safety standards for the protection of  
7 life and prevention of injuries in coal mines; and

8       WHEREAS, The Secretary of the Department of Labor has delegated  
9 the duty and authority to adopt mandatory safety and health  
10 standards for the coal mining industry to the Mine Safety and  
11 Health Administration within the Department of Labor for the  
12 express purpose of "the protection of life, the promotion of  
13 health and safety, and the prevention of accidents"; and

14       WHEREAS, The Mine Safety and Health Administration has adopted  
15 a regulation which provides that "intoxicating beverages and  
16 narcotics shall not be permitted or used in or around mines.  
17 Persons under the influence of alcohol or narcotics shall not be  
18 permitted on the job"; and

19       WHEREAS, Although the regulation is well intentioned, it does  
20 not provide any methods for determining drug or alcohol use,  
21 education about the dangers of use, or assistance for workers who  
22 need help; and

23       WHEREAS, The Mine Safety and Health Administration is the only  
24 governmental entity that has the authority to impose uniform

1 workplace regulations that include drug and alcohol testing upon  
2 the coal mining industry, not only in West Virginia, but throughout  
3 the United States; and

4       WHEREAS, The House of Delegates is committed to ensuring that  
5 all employees of the state have a safe workplace, and  
6 implementation and enforcement of comprehensive drug free workplace  
7 regulations that include drug and alcohol testing would further  
8 that priority; and

9       WHEREAS, The House of Delegates believes that the goal of a  
10 drug free workplace should not be limited to "catching" workers  
11 when they are impaired on the job, but should also include a strong  
12 program to eliminate drug and alcohol use and misuse in the  
13 workplace and provide employees with the assistance needed to live  
14 a healthy lifestyle; therefore, be it

15       *Resolved by the House of Delegates of West Virginia:*

16       That the House of Delegates hereby urges the Mine Safety and  
17 Health Administration of the United States Department of Labor to  
18 implement a comprehensive drug-free workplace regulations that  
19 include:

20       a. The implementation of mandatory drug and alcohol-testing  
21 which ensures the uniform and fair administration of such testing  
22 and utilizes newer, effective methodologies that screen for  
23 substances that impair judgment and/or performance, including  
24 alcohol, amphetamines, cocaine, opiates, marijuana, PCP, Oxycodone,

1 Oxycontin, Percoset, Hydrocodone, Vicodine, and  
2 Hydromorphone-Dilaudid; and

3       b. A procedure addressing post-accident drug and alcohol  
4 testing which defines those incidents or accidents that will  
5 trigger required drug and alcohol testing of employees who may have  
6 contributed to the accident, keeping in mind that even the "near  
7 miss" incidents can indicate the presence of an impaired employee,  
8 and specifies what actions should be required if it is determined  
9 that the use of alcohol or other drugs was a contributing factor or  
10 cause of the accident; and

11       c. A procedure addressing what actions operators should take  
12 once an impaired miner is identified, including removal from any  
13 safety-sensitive duties; and

14       d. A procedure to address employees who are using legally and  
15 properly prescribed drugs that may cause impairment; and

16       e. A requirement for uniform training and education for  
17 supervisors and employees, stipulating the specific type of  
18 training, how many hours of training, how often "refresher"  
19 training must be completed and what topics must be covered; and

20       f. The collection of data regarding testing results that  
21 indicate drug and/or alcohol abuse by an employee or prospective  
22 employee that is accessible only by a designated representative of  
23 each mine operator for the sole purpose of preemployment screening  
24 of prospective employees, but otherwise a requirement that all

1 information relating to drug and alcohol testing be kept in the  
2 strictest of confidence; and

3       g. The collection of industry-wide data, summarized in such a  
4 way that no individuals or specific mining locations could be  
5 identified, to permit the sharing of that data with other  
6 industries to assist them in creating safer working environments;  
7 and, be it

8       *Further Resolved*, That the Clerk of the House of Delegates  
9 forward a copy of this resolution to the Governor, the Senate and  
10 Mine Safety and Health Administration of the United States  
11 Department of Labor.